IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 958 of 2005

Between:

Pedda Settipalle Labour Constract Co-operative Society Limited, (Reg.No.596), rep. by its President, N.Mallikarjuna S/o.Chinna Subbaiah, R/o.Pedda Settipalli Village, Nandyalampeta Post, Mydakur Mandal, Kadapa District.

..... PETITIONER

AND

The Superintending Engineer (R&B) Circle Kadapa, Kadapa District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondent herein in not opening the price bid submitted by the petitioner pursuant to issuance of Tender Notice No.31/04-05, dt.27.12.2004 as arbitrary, illegal and unconstitutional and consequently direct to open the price bid submitted by the petitioner for the said work and process the same alongwith price bid submitted by other tenderers and pass such other order or orders.

Counsel for the Petitioner:MR.T.NIRANJAN REDDY

Counsel for the Respondent: GP FOR ROADS & BUILDINGS

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 958 of 2005

O R D E R:

Challenging the action of the respondent in not opening the price bid submitted by the petitioner pursuant to the issuance of tender notice No.31/04-05 dated 27.12.2004 as illegal and arbitrary, the present writ petition is filed.

The brief facts of the writ petition that are necessary for disposal of the writ petition may be stated as follows:

The respondent herein has issued a tender notice on 28.12.2004 calling for tenders through E.Procurement for 14 works. As per the tender notice, the tender schedules can be downloaded from 5.1.2005 and the last date for receipt of the tenders was 19.1.2005. The petitioner submitted tender in respect of Item No.13 of the tender notice. The estimated value of the work was Rs.12.40 lakhs. After uploading the necessary information on 18.1.2005, the System okayed the bid and acknowledgment was given. Therefore, he submitted his bid successfully. He also submitted hard copies to the respondent. After opening of technical bids, the respondent refused to open his price bid. Therefore, the petitioner states, the action of the respondent is illegal and arbitrary. It is also stated that with a view to help some other contractors the price bid of the petitioner has not been opened. Hence the present writ petition.

The respondent filed counter affidavit admitting about the issuance of notice inviting tender and submission of bid by the petitioner. It is further stated that 10 tenderers have participated in the

bid. During the opening of technical bids, the documents uploaded by all the bidders except the petitioner were found. Therefore the claim of the petitioner that he has successfully uploaded the documents is not correct. The petitioner had handed over hard copies but his uploaded documents could not be found. Therefore, the petitioner is not qualified. The petitioner was also asked to show his tenders on online giving ample time but he could not show the uploaded documents online at e-procurement platform. On evaluation of tenders Sri S.A. Hameed was the lowest tenderer (L1) with 16.99% less than estimate contract value and the same was accepted. The bids have been evaluated as per the specified parameters. As per G.O.Ms.No. 142 dated 20.12.2004, the single cover system shall be followed and the EMD shall be collected along with completed tender schedule. Similarly the single cover system was only followed and EMD was collected along with filing of tenders in online only. Hence there are no grounds to allow the writ petition and the same may be dismissed.

The petitioner filed an additional affidavit stating that as per amended G.O.Ms.No.142 dated 20.12.2004, for the works below Rs.50.00 lakhs of estimated value, single cover system shall be followed and therefore the respondent ought to have followed the single cover system instead of calling tenders through e-governance. Therefore the procedure followed by the Superintending Engineer is contrary to the procedure laid down in G.O.Ms.No. 142 dated 20.12.2004.

The respondent filed additional counter affidavit stating that the single cover system was only followed and EMD was

collected along with filing of tenders in online only. Hence he prays to dismiss the writ petition.

The learned counsel for the petitioner raised two contentions in this writ petition, firstly, that the petitioner has uploaded all the documents as required under the tender notification and the computer has given the bid number and therefore the respondent should have opened his price bid and, secondly, that the procedure followed by the Superintending Engineer is contrary to the procedure laid down in G.O.Ms.No.142 dated 20.12.2004 inasmuch as the Superintending Engineer ought to have followed the single cover system instead of calling for tenders through e-governance system.

On the other hand, learned Government Pleader for Roads & Buildings contended that the tender notification is not challenged in this proceedings and as per the notice inviting tenders, bidders need to scan and upload the documents as per the tender notice. The petitioner has not uploaded some documents and therefore he is not qualified at this stage and hence the writ petition is devoid of merit.

The respondent issued a tender notification on 28.12.2004 calling for tenders through e-procurement for 14 works. The last date for receipt of tenders was on 19.1.2005. In respect of Item No.13 of the tender notification i.e. construction of weak and narrow culvert at 137/6 kms. The petitioner submitted his tender. The estimated value of the said work was Rs.12.40 lakhs. According to the petitioner, all the necessary information was uploaded and he also received acknowledgment giving the bid number. But in the counter affidavit it is clearly stated by the respondent that the

petitioner has only handed over the bid copies but his uploaded documents could not be found in the abovementioned work in e-procurement market place. Even in the additional affidavit filed by the petitioner, he did not specifically deny the said fact. Therefore, it is not a case of discrimination so as to eliminate the petitioner. One of the terms and conditions in the NIT makes it clear that while registering on the e-procurement market place, bidders need to scan and upload the required documents as per the tender notice on their profile. The uploaded documents such as D.Ds., and other certificates need to be attached to the tender submitting the bids online. There upon the attested copies of those uploaded documents should be submitted on off-line to Superintending Engineer at least before one day of opening of price bid.

It is the specific case of the respondent that at the time of opening of technical bid the documents uploaded by all the bidders (9 in number) except the petitioner were found. Therefore, it cannot be said that the petitioner has successfully uploaded all the documents. If the system could not be in a position to receive the documents when the tenderers uploaded the documents, the same thing will apply to all the bidders. Simply because the petitioner received the acknowledgment giving the bid number, it does not mean all the documents were uploaded. Therefore, the contention of the petitioner that he uploaded all the copies of the relevant documents cannot be accepted. There is no arbitrariness on the part of the respondent in not opening the price bid. It is not a case of unfair treatment to the petitioner because nowhere in the affidavit it is stated that the tenders of other similarly situated persons as that of the petitioner have been opened by the respondent

Additional ground has been taken by filing affidavit stating that as per G.O.Ms.No.142 I & CAD (PW:Reforms) Department dated 20.12.2004 for the works below Rs.50.00 lakhs of estimated value, single cover system shall be followed and the EMD shall be submitted along with the completed tender schedule. The counter affidavit filed by the respondent would clearly go to show that single cover system was only followed and the EMD was submitted by filing tenders on online only. The amendment brought in G.O.Ms.No.142 dated 20.12.2004 that for the works below Rs.50.00 lakhs of estimated value single cover system shall be followed and the EMD shall be submitted along with the completed tender schedule has to be read along with G.O.Ms.No.20 dated 6.7.2004 and G.O.Ms.No.157 dated 28.10.2004. It is also made clear in the tender notification that the Department will not accept any tender submitted in the paper form until and unless the tenderers participated in the tender on online and then submitted the copies of the uploaded documents in the Superintending Engineer's Office. The tender conditions are not under challenge. Therefore, the contention that single cover system is not followed is incorrect. In the counter affidavit it is specifically stated by the respondent that single cover system was only followed and the EMD was collected along with filing of tenders.

It is not disputed before this court that in contractual matters a tenderer cannot have any enforceable right but at the same time the case of the petitioner should not be discriminated or unfairly treated. There is no factual foundation with regard to discrimination because it is not the case of the petitioner that the tenders of similarly situated persons as that of the petitioner have been opened. So also

there is no arbitrary action on the part of the respondent inasmuch as the price bid of the petitioner has not been opened for the reason that the essential documents have not been uploaded by the petitioner.

For the aforesaid reasons, the respondent is justified in not opening the price bid of the petitioner because he did not upload the eligibility document. Therefore, the writ petition is devoid of merit and it is accordingly dismissed. No costs.

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K.C. Bhanu, J.

Date: --04—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Superintending Engineer (R&B) Circle Kadapa, Kadapa District.
2. Two C.Cs. to the G.P. for Roads & Buildings, High Court of A.P. Hyderabad (OUT).

3. 2 CD copies